

HB 2254 - H AMD 348

By Representative Bailey

ADOPTED 03/15/2005

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 4.24.250 and 2004 c 145 s 1 are each amended to read
4 as follows:

5 (1) Any health care provider as defined in RCW 7.70.020 (1) and (2)
6 (~~as now existing or hereafter amended~~) who, in good faith, files
7 charges or presents evidence against another member of their profession
8 based on the claimed incompetency or gross misconduct of such person
9 before a regularly constituted review committee or board of a
10 professional society or hospital whose duty it is to evaluate the
11 competency and qualifications of members of the profession, including
12 limiting the extent of practice of such person in a hospital or similar
13 institution, or before a regularly constituted committee or board of a
14 hospital whose duty it is to review and evaluate the quality of patient
15 care and any person or entity who, in good faith, shares any
16 information or documents with one or more other committees, boards, or
17 programs under subsection (2) of this section, shall be immune from
18 civil action for damages arising out of such activities. For the
19 purposes of this section, sharing information is presumed to be in good
20 faith. However, the presumption may be rebutted upon a showing of
21 clear, cogent, and convincing evidence that the information shared was
22 knowingly false or deliberately misleading. The proceedings, reports,
23 and written records of such committees or boards, or of a member,
24 employee, staff person, or investigator of such a committee or board,
25 (~~shall not be~~) are not subject to review or disclosure, or subpoena
26 or discovery proceedings in any civil action, except actions arising
27 out of the recommendations of such committees or boards involving the
28 restriction or revocation of the clinical or staff privileges of a
29 health care provider as defined (~~above~~) in RCW 7.70.020 (1) and (2).

1 (2) A coordinated quality improvement program maintained in
2 accordance with RCW 43.70.510 or 70.41.200 and any committees or boards
3 under subsection (1) of this section may share information and
4 documents, including complaints and incident reports, created
5 specifically for, and collected and maintained by a coordinated quality
6 improvement committee or committees or boards under subsection (1) of
7 this section, with one or more other coordinated quality improvement
8 programs or committees or boards under subsection (1) of this section
9 for the improvement of the quality of health care services rendered to
10 patients and the identification and prevention of medical malpractice.
11 The privacy protections of chapter 70.02 RCW and the federal health
12 insurance portability and accountability act of 1996 and its
13 implementing regulations apply to the sharing of individually
14 identifiable patient information held by a coordinated quality
15 improvement program. Any rules necessary to implement this section
16 shall meet the requirements of applicable federal and state privacy
17 laws. Information and documents disclosed by one coordinated quality
18 improvement program or committee or board under subsection (1) of this
19 section to another coordinated quality improvement program or committee
20 or board under subsection (1) of this section and any information and
21 documents created or maintained as a result of the sharing of
22 information and documents shall not be subject to the discovery process
23 and confidentiality shall be respected as required by subsection (1) of
24 this section and by RCW 43.70.510(4) and 70.41.200(3).

25 **Sec. 2.** RCW 43.70.510 and 2004 c 145 s 2 are each amended to read
26 as follows:

27 (1)(a) Health care institutions and medical facilities, other than
28 hospitals, that are licensed by the department, professional societies
29 or organizations, health care service contractors, health maintenance
30 organizations, health carriers approved pursuant to chapter 48.43 RCW,
31 and any other person or entity providing health care coverage under
32 chapter 48.42 RCW that is subject to the jurisdiction and regulation of
33 any state agency or any subdivision thereof may maintain a coordinated
34 quality improvement program for the improvement of the quality of
35 health care services rendered to patients and the identification and
36 prevention of medical malpractice as set forth in RCW 70.41.200.

1 (b) All such programs shall comply with the requirements of RCW
2 70.41.200(1) (a), (c), (d), (e), (f), (g), and (h) as modified to
3 reflect the structural organization of the institution, facility,
4 professional societies or organizations, health care service
5 contractors, health maintenance organizations, health carriers, or any
6 other person or entity providing health care coverage under chapter
7 48.42 RCW that is subject to the jurisdiction and regulation of any
8 state agency or any subdivision thereof, unless an alternative quality
9 improvement program substantially equivalent to RCW 70.41.200(1)(a) is
10 developed. All such programs, whether complying with the requirement
11 set forth in RCW 70.41.200(1)(a) or in the form of an alternative
12 program, must be approved by the department before the discovery
13 limitations provided in subsections (3) and (4) of this section and the
14 exemption under RCW 42.17.310(1)(hh) and subsection (5) of this section
15 shall apply. In reviewing plans submitted by licensed entities that
16 are associated with physicians' offices, the department shall ensure
17 that the exemption under RCW 42.17.310(1)(hh) and the discovery
18 limitations of this section are applied only to information and
19 documents related specifically to quality improvement activities
20 undertaken by the licensed entity.

21 (2) Health care provider groups of five or more providers may
22 maintain a coordinated quality improvement program for the improvement
23 of the quality of health care services rendered to patients and the
24 identification and prevention of medical malpractice as set forth in
25 RCW 70.41.200. All such programs shall comply with the requirements of
26 RCW 70.41.200(1) (a), (c), (d), (e), (f), (g), and (h) as modified to
27 reflect the structural organization of the health care provider group.
28 All such programs must be approved by the department before the
29 discovery limitations provided in subsections (3) and (4) of this
30 section and the exemption under RCW 42.17.310(1)(hh) and subsection (5)
31 of this section shall apply.

32 (3) Any person who, in substantial good faith, provides information
33 to further the purposes of the quality improvement and medical
34 malpractice prevention program or who, in substantial good faith,
35 participates on the quality improvement committee shall not be subject
36 to an action for civil damages or other relief as a result of such
37 activity. Any person or entity participating in a coordinated quality
38 improvement program that, in substantial good faith, shares information

1 or documents with one or more other programs, committees, or boards
2 under subsection (6) of this section is not subject to an action for
3 civil damages or other relief as a result of the activity or its
4 consequences. For the purposes of this section, sharing information is
5 presumed to be in substantial good faith. However, the presumption may
6 be rebutted upon a showing of clear, cogent, and convincing evidence
7 that the information shared was knowingly false or deliberately
8 misleading.

9 (4) Information and documents, including complaints and incident
10 reports, created specifically for, and collected, and maintained by a
11 quality improvement committee are not subject to review or disclosure,
12 except as provided in this section, or discovery or introduction into
13 evidence in any civil action, and no person who was in attendance at a
14 meeting of such committee or who participated in the creation,
15 collection, or maintenance of information or documents specifically for
16 the committee shall be permitted or required to testify in any civil
17 action as to the content of such proceedings or the documents and
18 information prepared specifically for the committee. This subsection
19 does not preclude: (a) In any civil action, the discovery of the
20 identity of persons involved in the medical care that is the basis of
21 the civil action whose involvement was independent of any quality
22 improvement activity; (b) in any civil action, the testimony of any
23 person concerning the facts that form the basis for the institution of
24 such proceedings of which the person had personal knowledge acquired
25 independently of such proceedings; (c) in any civil action by a health
26 care provider regarding the restriction or revocation of that
27 individual's clinical or staff privileges, introduction into evidence
28 information collected and maintained by quality improvement committees
29 regarding such health care provider; (d) in any civil action
30 challenging the termination of a contract by a state agency with any
31 entity maintaining a coordinated quality improvement program under this
32 section if the termination was on the basis of quality of care
33 concerns, introduction into evidence of information created, collected,
34 or maintained by the quality improvement committees of the subject
35 entity, which may be under terms of a protective order as specified by
36 the court; (e) in any civil action, disclosure of the fact that staff
37 privileges were terminated or restricted, including the specific
38 restrictions imposed, if any and the reasons for the restrictions; or

1 (f) in any civil action, discovery and introduction into evidence of
2 the patient's medical records required by rule of the department of
3 health to be made regarding the care and treatment received.

4 (5) Information and documents created specifically for, and
5 collected and maintained by a quality improvement committee are exempt
6 from disclosure under chapter 42.17 RCW.

7 (6) A coordinated quality improvement program may share information
8 and documents, including complaints and incident reports, created
9 specifically for, and collected and maintained by a quality improvement
10 committee or a peer review committee under RCW 4.24.250 with one or
11 more other coordinated quality improvement programs maintained in
12 accordance with this section or with RCW 70.41.200 or a peer review
13 committee under RCW 4.24.250, for the improvement of the quality of
14 health care services rendered to patients and the identification and
15 prevention of medical malpractice. The privacy protections of chapter
16 70.02 RCW and the federal health insurance portability and
17 accountability act of 1996 and its implementing regulations apply to
18 the sharing of individually identifiable patient information held by a
19 coordinated quality improvement program. Any rules necessary to
20 implement this section shall meet the requirements of applicable
21 federal and state privacy laws. Information and documents disclosed by
22 one coordinated quality improvement program to another coordinated
23 quality improvement program or a peer review committee under RCW
24 4.24.250 and any information and documents created or maintained as a
25 result of the sharing of information and documents shall not be subject
26 to the discovery process and confidentiality shall be respected as
27 required by subsection (4) of this section and RCW 4.24.250.

28 (7) The department of health shall adopt rules as are necessary to
29 implement this section.

30 **Sec. 3.** RCW 70.41.200 and 2004 c 145 s 3 are each amended to read
31 as follows:

32 (1) Every hospital shall maintain a coordinated quality improvement
33 program for the improvement of the quality of health care services
34 rendered to patients and the identification and prevention of medical
35 malpractice. The program shall include at least the following:

36 (a) The establishment of a quality improvement committee with the
37 responsibility to review the services rendered in the hospital, both

1 retrospectively and prospectively, in order to improve the quality of
2 medical care of patients and to prevent medical malpractice. The
3 committee shall oversee and coordinate the quality improvement and
4 medical malpractice prevention program and shall ensure that
5 information gathered pursuant to the program is used to review and to
6 revise hospital policies and procedures;

7 (b) A medical staff privileges sanction procedure through which
8 credentials, physical and mental capacity, and competence in delivering
9 health care services are periodically reviewed as part of an evaluation
10 of staff privileges;

11 (c) The periodic review of the credentials, physical and mental
12 capacity, and competence in delivering health care services of all
13 persons who are employed or associated with the hospital;

14 (d) A procedure for the prompt resolution of grievances by patients
15 or their representatives related to accidents, injuries, treatment, and
16 other events that may result in claims of medical malpractice;

17 (e) The maintenance and continuous collection of information
18 concerning the hospital's experience with negative health care outcomes
19 and incidents injurious to patients, patient grievances, professional
20 liability premiums, settlements, awards, costs incurred by the hospital
21 for patient injury prevention, and safety improvement activities;

22 (f) The maintenance of relevant and appropriate information
23 gathered pursuant to (a) through (e) of this subsection concerning
24 individual physicians within the physician's personnel or credential
25 file maintained by the hospital;

26 (g) Education programs dealing with quality improvement, patient
27 safety, medication errors, injury prevention, staff responsibility to
28 report professional misconduct, the legal aspects of patient care,
29 improved communication with patients, and causes of malpractice claims
30 for staff personnel engaged in patient care activities; and

31 (h) Policies to ensure compliance with the reporting requirements
32 of this section.

33 (2) Any person who, in substantial good faith, provides information
34 to further the purposes of the quality improvement and medical
35 malpractice prevention program or who, in substantial good faith,
36 participates on the quality improvement committee shall not be subject
37 to an action for civil damages or other relief as a result of such
38 activity. Any person or entity participating in a coordinated quality

1 improvement program that, in substantial good faith, shares information
2 or documents with one or more other programs, committees, or boards
3 under subsection (8) of this section is not subject to an action for
4 civil damages or other relief as a result of the activity. For the
5 purposes of this section, sharing information is presumed to be in
6 substantial good faith. However, the presumption may be rebutted upon
7 a showing of clear, cogent, and convincing evidence that the
8 information shared was knowingly false or deliberately misleading.

9 (3) Information and documents, including complaints and incident
10 reports, created specifically for, and collected, and maintained by a
11 quality improvement committee are not subject to review or disclosure,
12 except as provided in this section, or discovery or introduction into
13 evidence in any civil action, and no person who was in attendance at a
14 meeting of such committee or who participated in the creation,
15 collection, or maintenance of information or documents specifically for
16 the committee shall be permitted or required to testify in any civil
17 action as to the content of such proceedings or the documents and
18 information prepared specifically for the committee. This subsection
19 does not preclude: (a) In any civil action, the discovery of the
20 identity of persons involved in the medical care that is the basis of
21 the civil action whose involvement was independent of any quality
22 improvement activity; (b) in any civil action, the testimony of any
23 person concerning the facts which form the basis for the institution of
24 such proceedings of which the person had personal knowledge acquired
25 independently of such proceedings; (c) in any civil action by a health
26 care provider regarding the restriction or revocation of that
27 individual's clinical or staff privileges, introduction into evidence
28 information collected and maintained by quality improvement committees
29 regarding such health care provider; (d) in any civil action,
30 disclosure of the fact that staff privileges were terminated or
31 restricted, including the specific restrictions imposed, if any and the
32 reasons for the restrictions; or (e) in any civil action, discovery and
33 introduction into evidence of the patient's medical records required by
34 regulation of the department of health to be made regarding the care
35 and treatment received.

36 (4) Each quality improvement committee shall, on at least a
37 semiannual basis, report to the governing board of the hospital in

1 which the committee is located. The report shall review the quality
2 improvement activities conducted by the committee, and any actions
3 taken as a result of those activities.

4 (5) The department of health shall adopt such rules as are deemed
5 appropriate to effectuate the purposes of this section.

6 (6) The medical quality assurance commission or the board of
7 osteopathic medicine and surgery, as appropriate, may review and audit
8 the records of committee decisions in which a physician's privileges
9 are terminated or restricted. Each hospital shall produce and make
10 accessible to the commission or board the appropriate records and
11 otherwise facilitate the review and audit. Information so gained shall
12 not be subject to the discovery process and confidentiality shall be
13 respected as required by subsection (3) of this section. Failure of a
14 hospital to comply with this subsection is punishable by a civil
15 penalty not to exceed two hundred fifty dollars.

16 (7) The department, the joint commission on accreditation of health
17 care organizations, and any other accrediting organization may review
18 and audit the records of a quality improvement committee or peer review
19 committee in connection with their inspection and review of hospitals.
20 Information so obtained shall not be subject to the discovery process,
21 and confidentiality shall be respected as required by subsection (3) of
22 this section. Each hospital shall produce and make accessible to the
23 department the appropriate records and otherwise facilitate the review
24 and audit.

25 (8) A coordinated quality improvement program may share information
26 and documents, including complaints and incident reports, created
27 specifically for, and collected and maintained by a quality improvement
28 committee or a peer review committee under RCW 4.24.250 with one or
29 more other coordinated quality improvement programs maintained in
30 accordance with this section or with RCW 43.70.510 or a peer review
31 committee under RCW 4.24.250, for the improvement of the quality of
32 health care services rendered to patients and the identification and
33 prevention of medical malpractice. The privacy protections of chapter
34 70.02 RCW and the federal health insurance portability and
35 accountability act of 1996 and its implementing regulations apply to
36 the sharing of individually identifiable patient information held by a
37 coordinated quality improvement program. Any rules necessary to
38 implement this section shall meet the requirements of applicable

1 federal and state privacy laws. Information and documents disclosed by
2 one coordinated quality improvement program to another coordinated
3 quality improvement program or a peer review committee under RCW
4 4.24.250 and any information and documents created or maintained as a
5 result of the sharing of information and documents shall not be subject
6 to the discovery process and confidentiality shall be respected as
7 required by subsection (3) of this section and RCW 4.24.250.

8 (9) Violation of this section shall not be considered negligence
9 per se."

10 Correct the title.

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